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Order 2001-6-3



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 7th day of June, 2001

TRIP.com, Inc.

Violations of 49 U.S.C. § 41712 and
14 CFR Part 399

Served June 7, 2001

CONSENT ORDER

This consent order concerns e-mail advertisements by TRIP.com, Inc. (TRIP.com) that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399). This order directs TRIP.com to cease and desist from future violations and to pay compromise civil penalties.

Recently, in TRIP.com's *Weekly Newsletter*, a fare for travel on American Trans Air was advertised "as low as \$170 roundtrip plus applicable taxes and fees." Readers were not advised of the nature and amount of the taxes and fees unless and until the reader accessed the flight search engine by clicking on the "visit here" link and fully pricing out an itinerary on the agency's website. A similar version of this advertisement was run several other times in other *Weekly Newsletter* editions.

Under 14 CFR 399.84, any advertising that states a price for air transportation is considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier or ticket agent for such air transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, imposed or approved by the government on a per-passenger basis, such as passenger facility charges, so long as their amounts appear or are stated in the advertisement. As published, the TRIP.com advertisements violate section 399.84 of the Department's regulations and 49 U.S.C. § 41712 by failing to list the nature and amount of government-approved or -imposed fees on the same page as the advertised fares or to note their existence in a prominent link proximate to

the advertised fare, that takes the viewer directly to a site containing such charges. (See, e.g., Orders 96-4-33 and 95-11-37).

In mitigation, TRIP.com states that its travel newsletter, an electronic document distributed by email over the Internet, relies on hyperlinks to sites on the World Wide Web as the primary medium to communicate information, with brief text items that act primarily as headlines or "pointers" to the associated link. According to TRIP.com, its newsletter items, with links and instructions for obtaining specific fare information, were not likely to deceive users, who are well-accustomed to the use of links for this purpose and who were provided the relevant information in a convenient, flexible and easily accessed format. TRIP.com states that it is aware of no evidence of material harm to consumers caused by its newsletter.

Furthermore, TRIP.com states that it had no intention to mislead anyone, and any compliance failure in the newsletter items identified herein were isolated and wholly inadvertent. TRIP.com also states that it is committed to full compliance with all of the Department's rules and regulations. When the Department first provided notice of its concerns in February 2001, TRIP.com immediately took steps to prevent any repetition of the alleged problems, and took other steps to enhance its compliance efforts, including steps to seek specific guidance from the Department.

The Enforcement Office has carefully considered the information provided by TRIP.com but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and TRIP.com have reached a settlement of this matter. TRIP.com, while neither admitting nor denying the violations, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$ 17,000 in compromise of potential civil penalties. Of this total penalty amount, \$8,500 shall be due and payable within 15 days of the service date of this order. The remaining \$8,500 shall be suspended for one year following issuance of this order, and then forgiven, unless TRIP.com violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$17,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by TRIP.com, as well as by airlines, travel agents, and other sellers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;

2. We find that TRIP.com, Inc. violated 14 CFR 399.84 by causing to be published fare advertisements that failed to state the entire price to be paid for the advertised air transportation;
3. We find that by engaging in the conduct and violation described in paragraph 2 above TRIP.com, Inc. also violated 49 U.S.C. § 41712;
4. TRIP.com, Inc., is ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. TRIP.com, Inc. is assessed \$17,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of that penalty amount \$8,500 shall be due and payable within 15 days of the service date of this order. The remaining \$8,500 shall be suspended for one year following service of this order, and then forgiven, unless TRIP.com, Inc. violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$17,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject TRIP.com, Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
6. Payment shall be made within 15 days of the service date of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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(1) To 021030004	(2) Type		
(3) From	(4) Ref.	(5) Amount	
(6) Ordering Bank and Related Data			
(7/8) TREAS NYC/CTR/OST			
(9) BNF=/AC-69010005 OBI=			
(10) Payor			
(11)			

1. **Treasury Department Code—Provided**
2. **Type Code—To be provided by sending bank.**
3. **Sending Bank's Code—(ABA#)**
4. **Reference No.—Optional number, entered if sending bank desires to number transaction.**
5. **Amount—Include dollar sign and punctuation including cents digits.**
6. **Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.**
- 7/8. **Entire line provided precisely as shown.**
9. **Entire line provided precisely as shown.**
10. **Enter name of air carrier or other payor (as shown on order).**
11. **Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."**

NOTE: Questions about these instructions should be directed to Mr. Yash Parekh, Office of Budget and Policy, Accounting Division, TBP-24, Rm 9422, DOT, phone: (202) 366-5760, fax: (202) 366-7163. To ensure proper credit, notify Mr. Parekh when each payment is made.